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5 Attorney for Plaintiff, Marilyn Churchill

6 UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 SAN FRANCISCO DIVISION

9 10 MARILYN CHURCHILL, an individual,

Civil Action No.: C07-003007 MMC

11 Plaintiff,

**NOTICE AND STIPULATED MOTION TO  
AMEND SCHEDULE**

12 vs.

13 JOHN BARGETTO, in his individual and  
 14 official capacities; BARGETTO'S SANTA  
 CRUZ WINERY, a California Corporation; and  
 15 DOES 1 through 100, inclusive,

Hearing Date: April 11, 2008

Time: 9:00 a.m.

Courtroom: 7, 19<sup>th</sup> Floor

16 Defendants.

Judge: Hon. Maxine M. Chesney

17 Trial Date: September 8, 2008

18 19 **NOTICE & STIPULATED MOTION**

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 Please take notice that on Friday, April 11, 2008 at 9:00 a.m. in Courtroom 7, 19<sup>th</sup>  
 22 Floor, the parties in this action, by and through their attorneys of record, will and hereby  
 23 jointly move the Court to amend the Scheduling Order in this matter pursuant to Federal  
 24 Rule of Civil Procedure 16(b)(4) (West 2008). Good cause exists for the Court to grant  
 25 this motion in its discretion.

26 Specifically, Plaintiff's counsel was involuntarily unavailable for a period of weeks  
 27 due to the sudden passing of his father in late January 2008, effectively resulting in the loss  
 28 of February for the resolution of substantial, pending discovery issues. In addition,

**NOTICE AND STIPULATED MOTION TO AMEND SCHEDULE**

1 Defense counsel recently established and joined a new law firm which adversely impacted  
 2 his professional schedule in the past weeks. Granting of this motion will also be in the  
 3 furtherance of justice, and will prevent manifest injustice, as it will permit the parties to  
 4 resolve their extensive discovery disputes and properly complete their pending discovery  
 5 so that this matter may be fully tried on its merits.

6 Accordingly, the parties respectfully request that the trial date and all other  
 7 scheduled dates in this matter be postponed by two (2) months. Given the parties' shared  
 8 interest in having this matter properly tried on its merits, the parties are amenable to a re-  
 9 setting of the trial date even as late as 2009 if the Court's calendar so dictates.

10 This motion is based on the facts, legal authority and argument presented herein, the  
 11 Declaration of David P. Morales in Support of Stipulated Motion to Amend Schedule  
 12 ("Morales Decl."), the legal record in this matter, and such other evidence and law as may  
 13 be presented to the Court.

#### APPLICABLE LAW

15 Federal Rule of Civil Procedure 16(b)(4) provides, in pertinent part, that "a schedule may  
 16 be modified only for good cause and with the judge's consent." *See Fed. R. Civ. Proc. 16(b)(4)*  
 17 (West 2008).

#### RELEVANT FACTS & ARGUMENT

19 In January 2008, the parties were working diligently to resolve discovery disputes  
 20 between them involving hundreds of pages of discovery objections and other discovery  
 21 issues, so they could proceed with their deposition discovery in preparation for scheduled  
 22 mediation in March 2008. *See Morales Decl., ¶2.* Unfortunately, Plaintiff's counsel  
 23 received word that his father suddenly passed away in late January 2008. *See id.* As a  
 24 result, Plaintiff's counsel had to promptly leave town to assist his family in Southern  
 25 California. *See id.*

26 Due to the suddenness of this unfortunate event and the needs of his mother,  
 27 Plaintiff's counsel was involuntarily unavailable for a period of approximately three weeks  
 28 in February 2008. *See Morales Decl., ¶3.* As a result, Plaintiff counsel's schedule was

1 adversely impacted in this matter, and, also in other professional matters pending  
 2 concurrently. *See id.* As a result, work which had been scheduled for that time period has  
 3 been postponed to, and superimposed upon additional legal work Plaintiff's counsel had  
 4 previously scheduled for March. *See id.* Plaintiff's counsel is diligently working to  
 5 resolve the remaining discovery disputes and to complete discovery. *See id.* However,  
 6 Plaintiff's counsel effectively lost the month of February, and is working to catch up in this  
 7 and his other pending litigation during the month of March. *See id.* As a result, the parties  
 8 feel that the existing schedule will not permit them to fully resolve their discovery disputes  
 9 and timely complete their discovery. *See id.*

10 Upon counsel's return to the office in late February, the parties cooperated with one  
 11 another to ensure the completion of pending discovery, and, on February 29, 2008, filed a  
 12 joint Stipulation to Continue Discovery Deadlines for that purpose. *See Morales Decl., ¶4.*  
 13 On March 4, 2008, the Court denied the parties' stipulation to extend the discovery  
 14 deadlines due to its apparent impact on the remaining schedule. Unfortunately, given the  
 15 extensive discovery previously initiated and the substantial discovery disputes still pending  
 16 resolution, it does not appear that such discovery can be properly completed on the present  
 17 schedule. *See id.* Granting of this motion will be in the furtherance of justice as it will  
 18 permit the parties to resolve their extensive discovery disputes and properly complete their  
 19 pending discovery so that this matter may be fully tried on its merits. *See id.* The  
 20 requested relief will also avoid manifest injustice in that it will permit this action to be  
 21 fully tried on its merits.

22 Defense counsel supports this motion not only due to his understanding of these  
 23 unfortunate circumstances, but also because Defense counsel recently established and  
 24 joined a new law firm which adversely impacted his professional schedule in the past  
 25 weeks.

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## **REQUESTED RELIEF**

Accordingly, the parties respectfully request that the trial date and all other scheduled dates in this matter be postponed by two (2) months. Given the parties' shared interest in having this matter properly tried on its merits, the parties are amenable to a re-setting of the trial date even as late as 2009 if the Court's calendar so dictates. The parties request this relief in order to permit pending discovery to be completed and to allow this matter to be fully tried on its merits.

Dated: March 7, 2008

## THE MORALES LAW FIRM

By: /s/ David P. Morales

DAVID MORALES  
Attorneys for Plaintiff

Dated: March 10, 2008

**TINGLEY PIONTKOWSKI LLP**

/s/ Bruce C. Piontkowski

**BRUCE C. PIONTKOWSKI**  
Attorneys for Defendants

1 I hereby attest that I have on file all holograph signatures for any signatures indicated by a  
2 "conformed" signature (/s/) within this efiled document.

3 Dated: March 8, 2008

4 TINGLEY PIONTKOWSKI LLP

5 By: /s/ Bruce C. Piontkowski  
6 BRUCE C. PIONTKOWSKI  
7 Attorneys for Defendants

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